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1. PUBLIC PARK UNDER CONTROL OF PARK COMMISSIONERS OF TOWNSHIP PARK DISTRICT—FUNDS FOR MAINTENANCE—TAX LEVIES MADE BY PARK COMMISSIONERS—SECTION 3415 ET SEQ., SECTION 3423 G. C.
2. TOWNSHIP TRUSTEES—NO AUTHORITY TO APPROPRIATE OR TRANSFER TOWNSHIP FUNDS TO MAINTAIN PUBLIC PARKS UNDER CONTROL OF PARK COMMISSIONERS OF TOWNSHIP PARK DISTRICTS.

SYLLABUS:

1. Funds for maintaining a public park under the control of the park commissioners of a township park district established under Section 3415, et seq., General Code, may be secured by tax levies made by the park commissioners under the authority of Section 3423, General Code.

2. Township trustees have no authority to appropriate or transfer township funds for the purpose of maintaining public parks under the control of the park commissioners of township park districts established under Section 3415, et seq., General Code.

Columbus, Ohio, May 29, 1945

Hon. Lester W. Donaldson, Prosecuting Attorney
Painesville, Ohio

Dear Sir:

This will acknowledge receipt of your letter relating to the authority of the trustees of Painesville township to appropriate township funds for the purpose of assisting the board of park commissioners of the Painesville township park district in maintaining a public park under its control. Your letter reads as follows:

“The Township of Painesville in this county is the owner of a township park. It is operated under and by a board of park commissioners appointed by the Common Pleas Court of the county under authority of Sections 3415, et seq., of the General Code of the State. It is the only township park.

Section 3423 of the General Code provides for the levying each year by the park commissioners of a sufficient amount to maintain such park as a free public park.

Section 3427-1 of the General Code authorizes the trustees of any township, having within its limits a public park, public square or grounds devoted to public uses for park purposes, and which are not under the control of the park commissioners, to do certain things.

The board of park commissioners of Painesville Township are without sufficient funds for the maintenance and upkeep of improvements of said park. The board of township trustees have plenty of money and would like to appropriate a lump sum to the board of park commissioners to assist in the maintenance of the park.

Are they permitted under the law to do this, or must the park commissioners make a levy, and is this the exclusive way of securing money from general taxes for the maintenance of the park?"

The law is well settled in this state that township trustees possess only such powers as are expressly conferred upon them by statute, or are by necessary implication requisite to perform the duties so imposed upon them. 39 O. Jur., p. 306, Sec. 46; Opinions of the Attorney General for 1939, No. 1545. And the Ohio Constitution expressly provides in Section 2 of Article X, that "No money shall be drawn from any township treasury except by authority of law."

An examination of the statutes relating to the powers and duties of township trustees generally, and also those relating specifically to township park districts and parks, particularly Section 3415, et seq., General Code, discloses that the only authority conferred upon township trustees to use township funds for park purposes, is contained in and limited by Sections 3427-1 and 3427-2, General Code. The two sections last mentioned, according to their own terms, extend only to public parks "which are not under the control of park commissioners", and therefore have no application to the park specifically mentioned in your letter. See also, Opinions of the Attorney General for 1939, No. 1556, and for 1920, No. 1647.

The financial affairs of one of the township park districts in your county was before this office for consideration about twelve years ago, and in an opinion addressed to the prosecuting attorney it was pointed out that Section 3423, General Code, specifically imposes upon the park commissioners of township park districts the duty of maintaining parks under

their control by tax levies, and that no responsibility or duty in that regard was placed upon the township trustees. Opinions of the Attorney General for 1932, No. 4881.

I have also examined the statutes relating to the transfer of public funds, and find no provision under which township trustees may transfer township funds for any purpose to township park districts or to boards of park commissioners. The provisions of the budget law, particularly Section 5625-13, and Sections 5625-13a to 5625-13g, General Code, relating to the transfer of funds, apply only to transfers from and to funds of the same subdivision. Since, as was held in Opinions of the Attorney General, No. 4881, *supra*, a township park district is not a subdivision under the budget law, but is a separate and distinct governmental district or taxing unit, it is clear that the provisions of the budget law relating to the transfer of subdivision funds have no application to township park districts or boards of park commissioners.

You are therefore advised as follows:

1. Funds for maintaining a public park under the control of the park commissioners of a township park district established under Section 3415, *et seq.*, General Code, may be secured by tax levies made by the park commissioners under the authority of Section 3423, General Code.

2. Township trustees have no authority to appropriate or transfer township funds for the purpose of maintaining public parks under the control of the park commissioners of township park districts established under Section 3415, *et seq.*, General Code.

Respectfully,

HUGH S. JENKINS

Attorney General